

2011 JUN 21 PM 4:03

BEFORE THE FEDERAL ELECTION COMMISSION

CELA

In the Matters of)	
)	
MUR 6374)	DISMISSALS AND CASE
ROLY ARROJO FOR CONGRESS)	CLOSURES UNDER THE
JOSE ROLANDO ARROJO,)	ENFORCEMENT PRIORITY
AS TREASURER)	SYSTEM
JOSE ROLANDO "ROLY" ARROJO)	
)	
MUR 6408)	
ROLY ARROJO FOR CONGRESS)	
JOSE ROLANDO ARROJO,)	
AS TREASURER)	
JOSE ROLANDO "ROLY" ARROJO)	

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MURs 6374 and 6408 as low-rated matters and has also determined that they should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MURs 6374 and 6408. As these

11044301082

matters involve the same respondents and similar issues, we have consolidated them into one General Counsel's Report.

I. MUR 6374

In this matter, complainant Liliana Ross asserts that congressional candidate Jose Rolando "Roly" Arrojo¹ and his campaign committee, Roly Arrojo for Congress and Jose Rolando Arrojo, in his official capacity as treasurer ("the Committee"), failed to register and report in a timely manner under the Act. Specifically, Mr. Arrojo failed to file a Statement of Candidacy within fifteen days of attaining "candidate" status and the Committee failed to file a Statement of Organization with the Commission within ten days of when Mr. Arrojo should have filed his Statement of Candidacy. *See* 2 U.S.C. §§ 431(2)(A), 432(e)(1) and 433(a). In support of her allegations, the complainant attaches a copy of a Committee-issued check to the Florida Department of State in the amount of \$10,440.00 for Mr. Arrojo's election qualification fee. The check is dated "April 27, 2010"² and is accompanied by a date stamp of "April 29, 2010" from the "[Florida] Department of State Division of Elections." Nonetheless, according to the complainant, Mr. Arrojo did not file his Statement of Candidacy, and his Committee did not file its Statement of Organization, until July 13, 2010, approximately two and one-half months later. Further, the complainant alleges that the Committee subsequently failed to file any financial disclosure reports, in violation of 2 U.S.C. § 434(a), including a July Quarterly Report, which was due by July 15, 2010, and a Pre-Primary Election Report, which was due by August 12, 2010.

¹ Mr. Arrojo unsuccessfully sought to represent Florida's 25th Congressional District.

² While the complainant asserts that the check was dated April 7, 2010, as we noted, the copy included with the complaint is dated "April 27, 2010" and is date-stamped "April 29, 2010."

11044301083

1 Responding on behalf of his Committee as well as himself, Mr. Arrojo contends that
2 he filed “the appropriate paperwork” with the State of Florida on April 28, 2010, including
3 payment of the \$10,440.00 filing fee. He further asserts that he filed both a Statement of
4 Organization and a Statement of Candidacy with the Commission, but maintains that his
5 campaign committee had not raised or spent more than \$5,000 and was therefore not required
6 to file financial disclosure reports with Commission.

7 **II. MUR 6408**

8 Complainant Mariana L. Cancio reiterates the allegations raised in MUR 6374
9 concerning the purported failure by Mr. Arrojo and his Committee to file financial disclosure
10 reports. Enclosed with the complaint is a copy of an Arrojo campaign mailer which, the
11 complainant asserts, “clearly shows that the committee has incurred financial expenses in
12 postage and printing.”

13 In response, Mr. Arrojo submitted an email characterizing the complaint as “baseless
14 and incorrect.” Mr. Arrojo also states that, since he had not raised or expended more than
15 \$5,000, his “understanding is that [he was] not [] required to file the fundraising reports.”

16 **III. ANALYSIS**

17 In addressing the issue of whether the respondents’ filings were timely and complete,
18 we observe that under 2 U.S.C. § 431(2)(A), an individual becomes a candidate for federal
19 office when he or she has received or made in excess of \$5,000 in contributions or
20 expenditures. Once an individual meets the \$5,000 threshold and has decided to become a
21 candidate, he or she has fifteen days to designate a principal campaign committee by filing a
22 Statement of Candidacy with the Commission. See 2 U.S.C. § 432(e)(1); 11 C.F.R.
23 § 101.1(a). The principal campaign committee must then file a Statement of Organization

11044301084

1 within ten days of its designation, *see* 2 U.S.C. § 433(a) and 11 C.F.R. § 102.1, and must file
2 disclosure reports with the Commission in accordance with 2 U.S.C. § 434(a).

3 Payments made by a candidate or authorized committee as a condition of ballot access
4 are specifically excluded from the definition of a "contribution" under the Act. 2 U.S.C.
5 § 431(8)(B)(xii). Because the Act does not provide a similar exclusion from the definition of
6 "expenditure," fees paid by a federal candidate or authorized committee as a condition of
7 ballot access are considered to be expenditures.³ Furthermore, under the Commission's
8 "testing the waters" regulations, payments made by an individual to qualify for the ballot
9 under State law are not excluded from the definition of expenditure. 11 C.F.R.
10 § 100.131(b)(5). *See also* MUR 6354 (Banciella) (an individual attained "candidate" status
11 and became subject to the Act's registration and reporting requirements after paying a filing
12 fee in excess of \$5,000).

13 Once Mr. Arrojo paid the Florida Department of State \$10,440.00 in ballot access
14 fees, on or about April 29, 2010, he exceeded the expenditure threshold for candidacy and
15 triggered the Act's registration and reporting requirements for himself and his authorized
16 committee. As such, Mr. Arrojo should have filed a Statement of Candidacy by May
17 14, 2010, and the Committee should have filed a Statement of Organization by May 24, 2010.
18 *See* 2 U.S.C. §§ 432(e)(1) and 433(a). However, the Commission's website reflects that the
19 respondents did not file their Statements of Candidacy and Organization until July 13, 2010.
20 Further, Mr. Arroyo's payment of the filing fee triggered the Act's reporting requirements
21 and, as a result, the Committee was obligated to begin filing reports pursuant to 2 U.S.C.

³ Compare 2 U.S.C. § 431(8)(B)(xii) (stating a "contribution includes neither payments made by a candidate or authorized committee of a candidate as a condition of ballot access, nor payments received by any political party committee as a condition of ballot access") with 2 U.S.C. § 431(9)(B)(x) (excluding from the definition of "expenditure," "payments received by a political party committee as a condition of ballot access which are transferred to another political party committee or the appropriate State official").

§ 434(a), beginning with the 2010 July Quarterly Report, which covers the time period from April 1, 2010 through June 30, 2010. Thus, by failing to timely register and report, Mr. Arrojo and the Committee violated 2 U.S.C. §§ 432(e)(1), 433(a), and 434(a), respectively.

Other than the expenditure for the filing fee with the Florida Department of State, the respondents maintain that the Committee did not raise or spend more than \$5,000. Thus, in light of the limited scope of the reporting violations, further Enforcement action does not appear to be warranted. Accordingly, under EPS, the Office of General Counsel has scored MURs 6374 and 6408 as low-rated matters and, therefore, in furtherance of the Commission's priorities as discussed above, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss these matters. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this Office recommends that the Commission remind Jose Rolando "Roly" Arrojo concerning the timely filing of the Statement of Candidacy, pursuant to 2 U.S.C. § 432(e), and Roly Arrojo for Congress and Jose Rolando Arrojo, in his official capacity as treasurer, concerning the timely filing of the Statement of Organization and financial disclosure reports, pursuant to 2 U.S.C. §§ 433(a) and 434(a).

IV. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission dismiss MUR 6374 and MUR 6408, close the file, and approve the appropriate letters. Additionally, this Office recommends that the Commission remind Jose Rolando "Roly" Arrojo concerning the timely filing of the Statement of Candidacy, pursuant to 2 U.S.C. § 432(e), and Roly Arrojo for

11044301086

Congress and Jose Rolando Arrojo, in his official capacity as treasurer, concerning the timely filing of the Statement of Organization and financial disclosure reports, pursuant to 2 U.S.C. §§ 433(a) and 434(a).

Christopher Hughey
Acting General Counsel

Date

6/21/11

BY:

Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration

Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Philip A. Olaya
Attorney

Ruth Heilizer
Attorney

11044301087